

REMARKS

As grounds for this request, applicant states as follows:

1. The final Office Action requests that applicant makes a species election, because they are deemed to lack unity of invention and states that they are not so linked as to form a single general inventive concept under PCT Rule 13.1:

The Office identifies as species: tablets, capsules, siosomes, liposomes, nanocapsules, coated tablet, suppository, ointment, cream, gel, or solution for infusion and/or injection.

The Office considered claim 4 the generic claim.

2. These "species" were present in the application since the application was filed. Neither in the restriction requirement of May 19, 2008 nor the first Office Action on the merits of October 29, 2008 mentions these now identified species.
3. 37 CFR §1.142(a) second sentence, indicates that a restriction requirement "will normally be made before any action upon the merits; however, it may be made at any time before final action" (*emphasis added*)
4. A restriction after an Office Action on the merits is proper only if applicant presents species claims to more than one patentably distinct species of the invention after an Office action on only generic claims, with no restriction requirement, the Office may require the applicant to elect a single species for examination or if other specific situations described in MPEP 809.02(a) apply.

Conclusion

Since the situations specified in 4. do not apply in the present case (see previously presented claims 5 and 6 (capsules), claim 8 (cream) etc.), applicant submits that the finality of the Office Action of October 1, 2009 was premature and respectfully requests that it is withdrawn.

No fee is believed to be due. However, the Office is authorized to charge undersigned's deposit account 50-3135 as required.

Respectfully submitted,

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